

AMENDED IN ASSEMBLY SEPTEMBER 4, 2013

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN ASSEMBLY AUGUST 7, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 594

Introduced by Senator Hill

February 22, 2013

An act to add Sections 54964.5 and 54964.6 to the Government Code, relating to campaign activity.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Hill. Use of public resources.

(1) Existing law prohibits the use of public funds for campaign activities.

This bill would prohibit a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use, ~~public resources, including but not limited to, public resources received in exchange for consideration,~~ *use public resources received* from a local agency for campaign activity, as defined, and not authorized by law. This bill would define, among other terms, “public resources” to ~~include, but not be limited to, cash, lands, buildings, funds, and facilities owned by a local agency~~ *mean any property or asset owned by a local agency and funds received by a nonprofit organization which have been generated from any activities related to conduit bond financing by those entities subject to specified conduit financing and transparency and accountability provisions,* and “nonprofit

organization” to mean an entity incorporated under the Nonprofit Corporation Law or a nonprofit organization that qualifies for exempt status under the federal Internal Revenue Code of 1986, except as specified. This bill would authorize a civil cause of action for a violation of these prohibitions and damages that include, but are not limited to, 3 times the value of the unlawful use of the public resources. This bill would authorize the Attorney General, a district attorney, and a city attorney of a city having a population in excess of 750,000 to seek these civil remedies.

(2) Existing law requires qualifying individuals and political organizations to report specified information, including, but not limited to, political contributions, in statements filed with the Fair Political Practices Commission.

This bill would require ~~an auditable~~ *a reporting* nonprofit organization that engages in campaign activity to deposit into a separate bank account all “specific source or sources of funds” it receives and to pay for all campaign activity from that separate bank account. This bill would define, among other terms, ~~“auditable”~~ *“reporting nonprofit organization”* to mean a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the organization’s annual gross revenue, as specified, and “specific source or sources of funds” to mean any funds received by the ~~auditable~~ *reporting* nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization, ~~including funds received in exchange for consideration~~, as specified.

This bill would further require ~~an auditable~~ *a reporting* nonprofit organization that engages in campaign activity ~~of specified amounts or more~~ to periodically disclose to the ~~Attorney General Franchise Tax Board~~, and post on its Internet Web site in a certain manner, the identity and amount of each specific source or sources of funds it receives for campaign activity, a description of the campaign activity, and the identity and amount of payments the organization makes from the required separate bank account, as specified. This bill would ~~require the Attorney General to biennially audit each auditable~~ *authorize the Franchise Tax Board to conduct an audit of any reporting nonprofit organization, require the board to conduct an audit of any reporting nonprofit organization that engages in campaign activity in excess of \$500,000 in a calendar year, issue a written audit report, and transmit the report to the Attorney General and the district attorney for the county in which the auditable reporting nonprofit organization is domiciled.*

This bill would authorize the Attorney General *or the district attorney for the county in which the reporting nonprofit organization is domiciled* to assess a monetary civil penalty of up to \$10,000 against ~~an auditable a reporting~~ nonprofit organization for each violation of these disclosure requirements, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54964.5 is added to the Government
2 Code, to read:

3 54964.5. (a) A nonprofit organization or an officer, employee,
4 or agent of a nonprofit organization shall not use, or permit another
5 to use, public resources, ~~including, but not limited to, public~~
6 ~~resources received by the nonprofit organization in exchange for~~
7 ~~consideration,~~ *received* from any local agency for any campaign
8 activity not authorized by law.

9 (b) As used in this section *and Section 54964.6*, the following
10 terms shall have the following meanings:

11 (1) “Ballot measure” means a state or local initiative,
12 referendum, or recall measure certified to appear on a regular or
13 special election ballot or other measure submitted to the voters by
14 the Legislature or the governing body of a local agency at a regular
15 or special election.

16 (2) “Campaign activity” means a payment that is used for
17 communications that expressly advocate for or against the
18 qualification of a clearly identified *ballot* measure, the approval
19 or rejection of a clearly identified ballot measure, or the election
20 or defeat of a clearly identified candidate by the voters, or that
21 constitutes a campaign contribution.

22 (A) ~~For the purposes of this section, “campaign~~ “*Campaign*
23 *activity*” does not include the costs of ~~an endorsement of a clearly~~
24 ~~identified ballot measure or candidate by a nonprofit organization~~
25 ~~through the adoption of~~ *adopting a position or* a resolution
26 supporting or opposing ~~the~~ *a clearly identified* ballot measure or
27 candidate, including, but not limited to, posting the ~~endorsement~~
28 ~~position or resolution~~ on the nonprofit organization’s Internet Web
29 site, communicating the ~~endorsement~~ *position or resolution* to
30 members of the nonprofit organization, or issuing a press statement.

1 (B) ~~For the purposes of this section, “campaign~~ “Campaign
2 activity” does not include incidental or minimal ~~inadvertent~~ use
3 of public resources.

4 (C) ~~For purposes of this section, “campaign~~ “Campaign activity”
5 does not include incidental costs related to the establishment or
6 administration of a sponsored committee as defined in Section
7 ~~82048.7, provided public resources are not used to pay for that~~
8 ~~cost.~~ 82048.7. A reasonable accounting method may be used to
9 determine the use of nonpublic resources to pay for that cost.
10 “Establishment and administration” means the cost of office space,
11 telephones, salaries, utilities, supplies, legal and accounting fees,
12 and other expenses incurred in establishing and operating a
13 sponsored committee.

14 (3) “Candidate” means an individual who has qualified to have
15 his or her name listed on the ballot, or who has qualified to have
16 write-in votes on his or her behalf counted by elections officials,
17 for nomination or election to an elective office at any regular or
18 special primary or general election, and includes any officeholder
19 who is the subject of a recall election.

20 (4) “Expenditure” means a payment used for communications
21 that expressly advocate the approval or rejection of a clearly
22 identified ballot measure, or the election or defeat of a clearly
23 identified candidate, by the voters or that constitutes a campaign
24 contribution.

25 (5) “Local agency” shall *have the same meaning as that term*
26 *is defined in paragraph (4) of subdivision (b) of Section 54964*
27 *and shall also include those entities listed in Section 54951 and a*
28 *public entity created pursuant to the Joint Exercise of Powers Act*
29 *(Chapter 5 (commencing with Section 6500) of Division 7 of Title*
30 *1) by one or more entities listed in Section 54951 described in*
31 *Section 54964.*

32 (6) “Nonprofit organization” means any entity incorporated
33 under the Nonprofit Corporation Law (Division 2 (commencing
34 with Section 5000) of Title 1 of the Corporations Code) or a
35 nonprofit organization that qualifies for exempt status under
36 Section 115 or 501(c) of the Internal Revenue Code. ~~“Nonprofit~~
37 ~~Code, provided, however, that “nonprofit organization” shall does~~
38 ~~not include a any nonprofit organization exempt that qualifies for~~
39 ~~tax-exempt status under Section 501(c)(3) of the Internal Revenue~~
40 ~~Code.~~

1 ~~(7) “Public resources” means any property or asset owned by~~
2 ~~a local agency, including, but not limited to, cash, land, buildings,~~
3 ~~facilities, funds, equipment, supplies, telephones, computers,~~
4 ~~vehicles, travel, and local government compensated time that is~~
5 ~~provided to a nonprofit organization.~~

6 (7) “Public resources” means the following:

7 (A) Any property or asset owned by a local agency, including,
8 but not limited to, cash, land, buildings, facilities, funds, equipment,
9 supplies, telephones, computers, vehicles, travel, and local
10 government compensated work time that is provided to a nonprofit
11 organization, except funds received in exchange for consideration
12 for goods or services.

13 (B) Funds received by a nonprofit organization which have been
14 generated from any activities related to conduit bond financing
15 by those entities subject to the conduit financing and transparency
16 and accountability provisions of Chapter 10.7 (commencing with
17 Section 5870) of Division 6 of Title 1, whether or not those funds
18 are received by the nonprofit in exchange for consideration for
19 goods or services.

20 (8) “Use” means a use of public resources from one or more
21 local agencies that is substantial enough to result in a gain or
22 advantage to the user or a loss to any local agency for which any
23 monetary value may be estimated.

24 (c) This section does not prohibit the use of public resources
25 for providing information to the public about the possible effects
26 of any ballot measure on the activities, operations, or policies of
27 the state or a local agency, provided that the informational activities
28 meet both of the following conditions:

29 (1) The informational activities are not otherwise prohibited by
30 the California Constitution or the laws of this state.

31 (2) The information provided constitutes an accurate, fair, and
32 impartial presentation of relevant facts to aid the electorate in
33 reaching an informed judgment regarding the ballot measure.

34 (d) (1) Any person who intentionally or negligently violates
35 this section is liable for a civil penalty not to exceed one thousand
36 dollars (\$1,000) for each day on which a violation occurs, plus
37 three times the value of the unlawful use of public resources. The
38 penalty shall be assessed and recovered in a civil action brought
39 in the name of the people of the State of California by the Attorney
40 General or by any district attorney or any city attorney of a city

1 having a population in excess of 750,000. If two or more persons
2 are responsible for any violation, they shall be jointly and severally
3 liable for the penalty. If the action is brought by the Attorney
4 General, the moneys recovered shall be paid into the General Fund.
5 If the action is brought by a district attorney, the moneys recovered
6 shall be paid to the treasurer of the county in which the judgment
7 was entered. If the action is brought by a city attorney, the moneys
8 recovered shall be paid to the treasury of that city.

9 (2) A civil action alleging a violation of this section shall not
10 be commenced more than four years after the date of the alleged
11 violation.

12 SEC. 2. Section 54964.6 is added to the Government Code, to
13 read:

14 54964.6. (a) ~~An auditable~~ *A reporting* nonprofit organization
15 that engages in campaign activity, either directly or through the
16 control of another entity, shall deposit into a separate bank account
17 all specific source or sources of funds received and shall pay for
18 all campaign activity from that separate bank account.

19 (b) As used in this section, the following terms shall have the
20 following meanings:

21 (1) ~~“Auditable”~~ *“Reporting nonprofit organization”* means a
22 nonprofit organization for which public resources from one or
23 more local agencies account for more than 20 percent of the
24 nonprofit organization’s annual gross revenue in the current fiscal
25 year or either of the previous two fiscal years, ~~including gross~~
26 ~~revenue from public resources received by the nonprofit~~
27 ~~organization in exchange for consideration. An auditable~~ *years. A*
28 *reporting* nonprofit organization shall not include a nonprofit
29 organization that sponsors a committee, as defined in Section
30 82048.7 of the Government Code, if the nonprofit organization
31 reports all contributions it received and all expenditures it made
32 on campaign disclosure statements filed by the sponsored
33 committee and the nonprofit organization makes no payments from
34 its general treasury to the sponsored committee other than payments
35 for contributions by donors earmarked for the sponsored
36 committee. For purposes of this subdivision, “earmarked” means
37 a payment by a donor to a nonprofit organization subject to a
38 condition, agreement, or understanding that the payment will be
39 used for making contributions or independent expenditures by the
40 sponsored committee of the sponsoring nonprofit organization.

(2) “Specific source or sources of funds” shall mean any funds received by the ~~auditable reporting~~ nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization, ~~including, but not limited to, funds received by the nonprofit in exchange for consideration,~~ organization that are used, in whole or in part, within a two-year period from receipt for campaign activity.

(3) Unless otherwise defined herein, the definitions found in subdivision (b) of Section 54964.5 shall apply to this section.

(c) ~~Fifteen~~ Thirty days after the end of each quarter, ~~an auditable a reporting~~ nonprofit organization that engages in campaign activity *of fifty thousand dollars (\$50,000) or more related to statewide candidates or ballot measures or engages in campaign activity of two thousand five hundred dollars (\$2,500) or more related to local candidates or ballot measures*, either directly or through the control of another entity, at any point during that quarter shall disclose the following information for that quarter:

(1) The name and amount of each specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by ~~an auditable a reporting~~ nonprofit organization from that specific source or sources of funds is at least two hundred fifty dollars (\$250).

(2) The name of the payee and amount of all payments aggregating two hundred fifty dollars (\$250) or more made from the single bank account required under subdivision (a).

(3) A description of each campaign activity.

(d) ~~Fifteen~~ Thirty days after the end of each even year, ~~an auditable a reporting~~ nonprofit organization that engages in campaign activity *of one hundred thousand (\$100,000) or more related to statewide candidates or ballot measures or engages in campaign activity of ten thousand dollars (\$10,000) or more related to local candidates or ballot measures*, either directly or through the control of another entity, at any point during that even year or the prior odd year shall disclose all the following information for those two calendar years:

(1) The name and amount of any specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by ~~an auditable a reporting~~ nonprofit organization from that

1 specific source or sources of funds is at least two hundred fifty
2 dollars (\$250).

3 (2) The name of the payee and amount of all payments made
4 from the single bank account required under subdivision (a).

5 (3) A description of each campaign activity.

6 (e) Each ~~auditable~~ reporting nonprofit organization that engages
7 in campaign activity, either directly or through the control of
8 another entity, shall *provide to the Franchise Tax Board and*
9 *display on its Internet Web site the information it is required to*
10 *disclose under this section. The information shall be clearly*
11 *described and identified on a separate Internet Web page, which*
12 *shall be linked from the homepage of the organization's Internet*
13 *Web site. The link to this Internet Web page from the homepage*
14 *shall be as visible as all similar links.*

15 (f) ~~The Attorney General shall~~ *Franchise Tax Board may*
16 *conduct a biennial an audit of each auditable any reporting*
17 *nonprofit organization that engages in campaign activity. Each*
18 *auditable is required to provide records to the board pursuant to*
19 *this section. The Franchise Tax Board shall conduct an audit of*
20 *any reporting nonprofit organization that engages in campaign*
21 *activity in excess of five hundred thousand dollars (\$500,000) in*
22 *a calendar year. The reporting nonprofit organization shall provide*
23 *records to the Attorney General Franchise Tax Board that*
24 *substantiate the information required to be disclosed by this section.*
25 ~~The Attorney General~~ *Franchise Tax Board* shall determine
26 whether the organization complied with the requirements of Section
27 54964.5 and this section, issue a written audit report, and transmit
28 the written audit report to *the Attorney General and the district*
29 *attorney for the county in which the auditable reporting nonprofit*
30 *organization is domiciled.*

31 (g) ~~If the Attorney General~~ *Franchise Tax Board* determines at
32 the conclusion of an audit that ~~an auditable a reporting~~ nonprofit
33 organization has violated Section 54964.5 or this section, the
34 ~~Attorney General or the district attorney for the county in which~~
35 *the reporting nonprofit organization is domiciled* may impose a
36 civil fine upon the ~~auditable reporting~~ nonprofit organization in
37 an amount up to ten thousand dollars (\$10,000) for each violation.